

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JAMES S. THOMPSON,

Plaintiff,

vs.

NORMAN HOWARD, ROY MEHALIK,
REDSTONE TOWNSHIP, LUZERNE TOWNSHIP,
TROOPER BROADWATER, PA. STATE POLICE,
COMMONWEALTH OF PENNSYLVANIA and
FAYETTE COUNTY,

Defendants.

Civil Action No. 2:09-cv-01416-NBF-LPL

JUDGE NORA BARRY FISCHER
MAGISTRATE JUDGE LISA PUPO LENIHAN

Electronically Filed

JURY TRIAL DEMANDED

MOTION TO DISMISS PURSUANT TO F.R.Civ.P. 12(b)(6)

AND NOW, comes the defendant, FAYETTE COUNTY, by and through its undersigned counsel, JonesPassodelis, PLLC, and files its Motion to Dismiss Pursuant to F.R.Civ.P. 12(b)(6) and asserts as follows:

1. Plaintiff, James Thompson, filed a Complaint relating to interaction he had with two police officers in March of 2008.
2. Initially, he filed the Complaint on behalf of other individuals as well. However, the Court has since dismissed those persons as plaintiffs since they did not raise these claims individually or on their own.
3. There are a number of defendants, aside from the officers, about whom plaintiff complains.

4. In the somewhat rambling, 44 paragraph, single spaced, handwritten, nine page Complaint, this defendant, Fayette County, is mentioned in only two paragraphs.

5. Specifically, at paragraph 39 and 40, the only mention of this defendant and the allegations against this defendant are as follows:

39. That the County of Fayette and the governing body of Fayette County in the form of the Fayette County Commissioners is responsible for all employees that work for or perform law enforcement within the County of Fayette under their authority.

40. That the County of Fayette and the governing body of Fayette knew or should have known of the wrongful acts of Officer Howard and Officer Mehalik.

6. These allegations are insufficient under any set of circumstances to permit a claim against Fayette County to proceed.

7. Plaintiff is basing his claim against Fayette County solely under the mistaken belief that the County or its Commissioners have responsibility for any law enforcement personnel within the County, even though those persons are clearly not employed by the County.

8. Officer Howard is alleged to be employed by Redstone Township Police and Officer Mehalik is alleged to be employed by Luzerne Township Police.

9. Accordingly, neither of these individuals are even alleged to be employed by Fayette County.

10. The conclusory and improper allegations then that Fayette County should have responsibility for persons in law enforcement just because they happen to be found within the County is not based upon any law or, frankly, logic.

11. Any claim based upon the status of the County as either a supervisor or an entity that should oversee other persons or entities is improperly based upon respondeat superior, which is not a proper basis for liability.

12. There are no allegations relative to any practice, policy or custom of the County for which a claim of municipal liability would be proper.

13. There are claims for punitive damages included in this case which are improper against a municipal entity like Fayette County.

14. Accordingly, as a result of the fatal deficiencies in the Complaint, which could not be cured by any amendment, the Complaint should be dismissed with prejudice against Fayette County.

WHEREFORE, defendant, FAYETTE COUNTY, respectfully requests that this Honorable Court grant its Motion to Dismiss and dismiss all claims against it with prejudice.

JonesPassodelis, PLLC

BY: s/Marie Milie Jones

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Counsel for Defendant,
FAYETTE COUNTY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **MOTION TO DISMISS PURSUANT TO F.R.Civ.P. 12(b)(6)** has been served upon all parties either individually or through counsel by:

_____	Hand-Delivery
<u> X </u>	First-Class Mail, Postage Prepaid
_____	Certified Mail-Return Receipt Requested
_____	Facsimile
_____	Federal Express
<u> X </u>	Electronic Service

at the following address:

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JonesPassodelis, PLLC

Dated: July 12, 2012

s/Marie Milie Jones
MARIE MILIE JONES, ESQUIRE

Counsel for Defendant,
FAYETTE COUNTY